P.E.R.C. NO. 85-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,

Petitioner,

-and-

Docket No. SN-85-42

LOCAL 196, INTERNATIONAL FEDERATION
OF TECHNICAL AND PROFESSIONAL ENGINEERS,
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that Local 196, International Federation of Technical and Professional Engineers, AFL-CIO, filed against the New Jersey Highway Authority. The grievance protested a loss of overtime work as a result of the Authority's subcontracting of trash removal duties. The Commission, relying on In re Local 195, IFPTE, 88 N.J. 393 (1982), holds that the ultimate substantive decision to subcontract is a non-negotiable matter of managerial prerogative and therefore may not be submitted to binding arbitration.

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Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro Murphy, P.C. (Melvin L. Gelade, of Counsel)

For the Respondent, Joseph Spicuzzo, Consultant

DECISION AND ORDER

On December 10, 1984, the New Jersey Highway Authority ("Authority") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks to restrain arbitration of a grievance filed by Local 196, International Federation of Professional and Technical Engineers, AFL-CIO ("Local 196"), the majority representative of the Authority's toll collectors and maintenance employees.

Both parties have filed briefs and documents. The following facts appear.

The Authority operates the Garden State Parkway. There are six service areas on the Parkway, each of which has one or more restaurants (Roy Rogers and/or Bob's Big Boy). The Marriott

Corporation operates these restaurants pursuant to a contract with the Authority.

There are eight restaurants in all. Four operate 24 hours a day; two operate 24 hours a day during the summer and from 7 a.m. to 11 p.m. at all other times; and two operate from 6 a.m. to 10 p.m. year round except on holidays and major holiday weekends when they are open 24 hours a day.

Section 14.5 of the Authority's contract with Marriott provides that the restaurant operator will be responsible for trash removal and for policing and picking up trash from outside containers, parking lots and grounds. Before Marriott's operation of these restaurants, members of Local 196's unit cleaned up litter and debris at the service areas. Part-time, non-bargaining unit employees helped clean up during the summer. The Authority's maintenance employees work 7:30 a.m. to 3:30 p.m. during the winter and 7:00 a.m. to 5:00 p.m. during other seasons. Authority maintenance employees, were paid overtime for cleaning up litter on weekends and holidays. When Marriott assumed operation of these restaurants, its employees cleaned up the service areas.

On July 11, 1984, 22 maintenance employees filed a grievance (number M-5). The grievance protested their loss of overtime work and asserted that allowing Marriott employees to clean up litter violated Article III C, Section 6 of the agreement between the Authority and Local 196. This section provides:

> In each Maintenance District, Maintenance 1 and 2 employees may request a bulletin to be

> posted that they will accept work on holidays and week-ends in their District and Service Area. Such work will be made available to those employees requesting same at time posted on a seniority basis. If no employee is available for any holiday or week-end, the lowest senior employee on the list will be assigned to such work. This assignment shall be equalized among all employees on the list.
>
> If in a District there are not sufficient employees on the list to properly maintain the scheduling of this type of work during the entire year, the Authority may fill such holiday and week-end with part-time employees.

The grievance was processed through the steps of the grievance procedure to arbitration. The instant petition ensued.

The Authority contends that the grievance concerns its non-negotiable decision to subcontract work. It cites In re Local 195, IFPTE, 88 N.J. 393 (1982) ("Local 195"). .The Authority points out that even though its subcontract to Marriott did not result in the layoff or demotion of any employees represented by Local 196, it nonetheless did discuss the matter with Local 196 officials.[1/] The Authority gives two reasons for its decision to have the litter clean-up at the service area restaurants performed by employees of the contractor. First, the Authority points out that since its maintenance employees work only day shifts and employees of the restaurants will be present 24 hours a day, the latter group of

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1/ The Authority also asserts that it has a contractual right to subcontract. This argument is beyond our jurisdiction in this proceeding. See Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

employees may better maintain a neat appearance at the service areas. Second, the Authority asserts that by having employees of the subcontractor clean up the litter, it will save a great deal of overtime which had previously been earned by its maintenance employees.

Local 196 argues that Sections 12.3 and 14.5 of the Authority-Marriott agreement are not within the scope of subcontracts that the Supreme Court addressed and found non-negotiable in Local 195. Local 196 also asserts that the instant grievance would not significantly interfere with any governmental policy of the Authority.

In this case, Local 196 is effectively challenging the Authority's decision to subcontract the work of cleaning up litter. Given this, it is clear that Local 195 controls this case. There, the court held that the ultimate substantive decision to subcontract is a non-negotiable matter of managerial prerogative. Id. at 408. Since this grievance challenges the Authority's non-negotiable right to subcontract litter clean-up at its service areas, we must restrain arbitration.[2/]

2/ We have, however, recognized that where work is taken away from bargaining unit members and given to other employees of the same public employer in order to save overtime, such a decision is mandatorily negotiable. See, Rutgers University, P.E.R.C. No. 82-20, 7 NJPER 505 (Para. 12224 1981), aff'd Docket No. A-468-81T1 (App. Div. 1983).

ORDER

The New Jersey Highway Authority's request for a permanent restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey
April 25, 1985
ISSUED: April 26, 1985